has become statute-barred. Thus except for the first sum of $29,500.00 the appeal is allowed and it is allowed with costs.

As regards interest on the $29,500.00, we think it is fair and proper that it should be at the rate of 3% from the date the deceased received the sum to the date of the judgment in the court below and thereafter at the rate of 8% to the date of payment.

The deposit of this appeal should be refunded to the appellants.

*Order accordingly.*

Solicitors: *Sri Ram, Zulkifli & Kumar; Gan Teik Chee & Co.*

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## CONSOLIDATED PLANTATION BHD. v. PEMUNGUT HASIL TANAH KELANG

**[F.C. (Salleh Abas C.J. (Malaya), Abdul Hamid & Syed Agil Barakbah F.JJ.) November 16, 1983 January 20, 1984]**

**[Kuala Lumpur – Federal Court Civil Appeal No. 94 of 1983]**

*Land Law – Land acquisition – Injurious affection – Alleged loss of water supply – Land Acqusition Act, 1960, First Schedule, paragraph 2(d).*

In this case the Selangor Government had acquired a portion of the land belonging to the appellant company for a housing scheme. At the hearing before the Collector the appellant company asked for a total compensation of $25,236,240.00 made up as follows:–

| | | |
|---|---|---|
| (a) | value of the land at $19,910.00 per acre for 491.7 acres | ... $ 9,790,000.00 |
| (b) | diminished value of the remaining lot not acquired at $10,780.00 p.a. for 34.32 acres | ... $ 370,000.00 |
| (c) | accommodation works | ... 314,250.00 |
| (d) | loss of water supply and consequential closing of mill | ... 14,657,250.00 |
| (e) | surveyors' fee at 1% | ... 104,740.00 |

The Collector only made an award as regards claims under (a) at $7,500.00 per acre and nothing else. In the reference before Abdul Razak J. the appellant withdrew their claim (c) but continued to press their claims (a), (b), (d) and (e). The learned Judge increased the Collector's award as follows:–

| | | |
|---|---|---|
| (a) | value of the land at $12,000.00 p.a. for 491.7 acres | ... $5,900,400.00 |
| (b) | diminished value of the remaining area of 34.32 acres not acquired at $6,000.00 p.a. | ... 205,920.00 |
| (c) | claim abandoned | |
| (d) | loss of water supply to be compensated by turfing | ... 231,000.00 |
| | | $6,337,320.00 |

The learned judge allowed the claim for (e) survey fee at 1% of the land value ($6,337,320.00)

The appellant company accepted the judgment as regards claims (a), (b), and (e) but disputed that part which pertains to their claim (d), that is, an award of $231,000.00 as the cost of turfing for the loss of water supply to the mill. There was no dispute as to the injurious effect of the acquisition on the oil palm mill of the appellant as they lost part of the catchment area for their water supply to the mill.

**Held:** on the evidence the appellant had not proved the loss of water as urged by them. The learned judge would have rejected the claim altogether had it not been that the witness for the respondent admitted that the source of water supply would be affected. In the circumstances the award of the learned judge for the cost of turfing as compensation for the minimal loss of water supply was reasonable and should not be disturbed.

FEDERAL COURT.

*Wong Chong Wah* for the appellant.

*Dato' Abdul Malik bin Mohamed Salleh*, Legal Adviser, Selangor, for the respondent.

*Cur. Adv. Vult.*

**Salleh Abas C.J. (Malaya)** (delivering the Judgment of the Court): This is an appeal arising out of the Selangor State Government acquiring large tracts of land belonging to the appellant company on May 5, 1973 for the purpose stated in the State Government Gazette Notification of that date to be for a "housing scheme". (Selangor Gazette Notification No. 213/73). The total acquired area, 491.7 acres in all, was part of the appellant company's estate, known as Bukit Raja Estate, which before the acquisition had a total acreage of 1711.2 acres. The acquired area consists of portions of four lots, i.e. Lots Nos. 2897, 3903, 93 and 344.

In the hearing before the Collector the appellant company asked for a total compensation of

$25,236,240.00 made up as follows:

| | | |
|---|---|---|
| (a) value of the land at $19,910.00 per acre for 491.7 acres | ... | $ 9,790,000.00 |
| (b) diminished value of the remaining lot not acquired at $10,780.00 p.a. for 34.32 acres | ... | 370,000.00 |
| (c) accommodation works | ... | 314,250.00 |
| (d) loss of water supply and consequential closing of mill | ... | 14,657,250.00 |
| (e) surveyors' fee at 1% | ... | 104,740.00 |

The Collector only made an award as regards claim under (a) at $7,500.00 per acre and nothing else. In the Reference before Abdul Razak J. the appellant withdraw their claim (c), but continued to press their claims (a), (b), (d) and (e). The learned judge increased the Collector's award as follows:

| | | |
|---|---|---|
| (a) value of the land at $12,000.00 p.a. for 491.7 acres | ... | $ 5,900,400.00 |
| (b) diminished value of the remaining area of 34.32 acres not acquired at $6,000.00 p.a. | ... | 205,920.00 |
| (c) claim abandoned | | |
| (d) loss of water supply to be compensated by turfing | ... | 231,000.00 |
| | | $6,337,320.00 |

The learned judge allowed the claim for survey fee at 1% of the land value ($6,337,320) and also ordered interest at 6% from the date of taking possession till the date of realization.

The appellant company accepted the judgement as regards claims (a), (b) and (e) but disputed that part which pertains to their claim (d), i.e. an award of $231,000.00 as the cost of turfing as compensation for the loss of water supply to the mill. Hence the appeal relates to that part of the judgment only.

The acquired area is part of the appellant company's Bukit Raja Estate. In this estate there is an oil palm mill and also an SMR rubber factory. The mill was built in 1965 at a cost of $6,675,846 (See page 108 of Appeal Record, Part II). It started production in January, 1966 and is capable of processing 60 tons of palm oil fruits an hour. It requires 553,500 gallons of water per day to operate at its maximum capacity and also a standby supply of 25,000 gallons of water at all times. (See page 98 of Appeal Record, Pt. II). The mill and the factory lie outside the acquired area, but the appellant company rely for their water requirements to operate the mill on the water from the catchment area which is within the Estate itself. Part of the catchment area is now acquired by the present acquisition exercise. It is the contention of the appellant company that the acquisition has so fragmented the catchment area that what is left of it would be so small as to result in a considerable reduction of water supply to the mill and that this loss would in turn affect the mill's productive capacity and that, therefore, the appellant company should be entitled to a compensation for the damage.

This claim is obviously made under subparagraph (d) subparagraph 2 of the First Schedule to the Land Acquisition Act, 1960. This subparagraph allows compensation for –

> "the damage, if any, sustained or likely to be sustained by the person interested at the time of the Collector's taking possession of the land by reason of the acquisition injuriously affecting his other property, whether movable or immovable, in any other manner."

This means that if the acquisition of the appellant company's land injuriously affects their other property, they are entitled to be compensated for the damage, actual or likely on the date of the Collector taking possession, which in this case was June 21, 1973. (See page 19 of Appeal Record). In this case we must agree with the appellant company's submission that in view of the fact that the land was acquired for a housing scheme, which when carried out would change the character and contour of the land, they could no longer rely upon the part of the catchment area which is included in the acquired area for their water supply to the mill. On the evidence before the learned judge, there seems to be no dispute as to the injurious effect of the acquisition on the mill, because even DW2, a Drainage and Irrigation Department (DID) engineer who gave evidence for the Collector agreed and said that the acquisition would partly affect the source of water supply, but

that this apprehended loss of water could be prevented if the acquired land is turfed. Hence the learned judge awarded the cost of turfing as the measure of damage.

This appeal really turns upon one issue only, i.e. what is the measure of damage to be awarded for the likely loss of water supply to the mill?

Counsel for the appellant company strongly criticised the propriety of the learned judge awarding the cost of close-turfing and also the impracticability of the turfing work to be done since the acquired land is no longer the appellant company's property. Impropriety and impracticability aside, this award clearly reflects the difficulty which this case has presented to the learned judge. The appellant company claimed that the operation of this mill would be affected and this was agreed to by the respondent, but to what extent? Here the parties are at variance.

We know that this mill is a 60 tons of fruits per hour mill and that in order to work up to its maximum capacity, it requires 553,500 gallons of water per day and a stand-by supply of 25,000 gallons at all times. But the question is how much water would be lost by the acquisition? The evidence given by the appellant company's mechanical engineer (PW3) is that there would be a 30% loss, because the total area of catchment was only 300 acres, of which 100 acres were included as part of the acquired area. DW2, who is a DID engineer attached to the Klang District and who had visited the area to make a survey of the catchment area, on the other hand, disputed the size of the catchment area and the acquired area. He said that the total catchment area was 441 acres and that only 73 acres were included in the acquisition exercise, thus leaving a balance of 368 acres. In other words, less than a quarter of the catchment area was acquired as opposed to a third leaving only 200 acres as claimed by the appellant company's witness (PW3). Although the learned judge did not make a specific finding as to the original size of the catchment area and how much of it was taken and how much of it is still left, it is not difficult to see from his judgment why he glossed over this issue.

He was obviously not impressed by the evidence given by PW3 and PW4 on behalf of the appellant company. It cannot be disputed that on March 30, 1982 the appellant company sent a letter to DW2 for permission to tap water from a nearby DID drain for use by their mill. The letter was signed by the appellant company's mill manager. Permission granted by DW2 was conveyed in his letter dated April 8, 1982. Yet in the face of this correspondence, PW3 denied that the drain in question serves both Bukit Raja Estate and another estate called North Hammock. PW4, the appellant company's manager for Bukit Raja Estate made it worse by completely denying that the Estate ever made such an application. These denials led the learned judge to conclude –

> "Why were they deliberately hiding the truth? Was it not because, contrary to their denials, the estate would have sufficient supply, if and when a shortage of water arises. That must be the necessary conclusion from the way they answered".
> (p.80 of Record)

We could hardly disagree with the learned judge's comments, as the evidence clearly demonstrates, that whatever loss of water, if any, could be remedied by making use of the alternative or additional source of supply, i.e. water from the DID drain. There is thus no basis at all for the appellant company to estimate the loss to be at 30% except for their contention that the original catchment area was already small (300 acres) of which 1/3 was acquired. In any case their claim and contention remain unproved and appear to be a mere exaggeration and speculation.

The cost of the mill and SMR factory as in 1965 was $6,675,846.00 (page 108 of Appeal Record, Pt.II). The claim of $14,657,250.00 which the appellant company made before the Collector and the Court below and here is based on the full 100% replacement value of the mill. The sum is made up as follows:

| | | |
|---|---|---|
| (1) New 60 tons per hour Palm Oil & SMR Plant with ancillary buildings | ... | $10,585,000 |
| (2) Additional transportation cost in perpetuity | ... | 3,772,250 |
| (3) Cost of land – 15 acres = $20,000.00 per acre | ... | 300,000 |
| Total | | $14,657,250 |

This was the estimate made by Mr. Cooper, the appellant company's Engineering Director on August 2, 1973 (see page 109 of Appeal Record, Pt. II). Yet despite this estimate, PW3 whilst giving evidence before the learned judge on September 13, 1982 increased the estimated replace-

ment cost to $33,000,000 for a 60 ton per hour mill and $15,000,000 for a 30 ton per hour mill. We do not know on what basis he made this estimate. But whatever it is, the effect of this evidence is to convey to the Court a contention that even the claim for $14,657,250.00 is low having regard to the current replacement value of $33,000,000.00. In our judgment if the loss of water was estimated to be only 30% we fail to see how and why and on what principle the appellant company should be compensated with full 100% replacement value of the mill? Is this reasonable especially when their claim of 30% loss of water supply is not even proved?

That being the case, it is not surprising at all that the learned judge accepted the evidence of DW2. He would have rejected the claim altogether had it not been for the fact that DW2 admitted that the source of water supply would be affected but that the extent affected would only be such as could be remedied by having the acquired land turfed. Hence he awarded the cost of turfing to be at 50 cents p.s.f. totalling $231,000.00.

We now come to deal with counsel's criticism of the award. This award, as we observed earlier, reflects the non-realistic nature of the appellant company's claim. There is no proper principle to base the claim for full 100% replacement value of the mill (whether it be $14,657,250 or $33,000,000) especially when the loss of water supply estimated to be 30% has not even been proved. What alternative was there for the learned judge? In our view he was not wrong nor in any way misdirected when he accepted the evidence of DW2 and awarded the compensation to be an amount equivalent to the cost of turfing because their loss would only be slight. This is a very reasonable approach and we are not prepared to interfere. We certainly do not read the award as if it is an order for the appellant company to turf the acquired area at the respondent's expense up to the limit of the awarded sum. What the award amounts to is that a sum equivalent to cost of turfing at 50 cents p.s.f. of the acquired area should be a sufficient and reasonable amount of compensation for the possible minimal, we repeat minimal, loss of source of water supply to the mill.

Hence we dismiss the appeal with costs. The deposit should be paid to the respondent on account of taxed costs.

*Appeal dismissed.*

Solicitors: *Skrine & Co.*

## SHAW BROTHERS (K.L.) SDN. BHD. v. LEMBAGA BANDARAN, KOTA BHARU & ANOR.

[F.C. (Salleh Abas C.J. (Malaya), Abdul Hamid & Syed Agil Barakbah F.JJ.), November 23, 1983 & January 27, 1984]

[Kuala Lumpur – Federal Court Civil Appeal No. 179 of 1982]

*Local Government – Valuation of rateable property – Revaluation of property – No notice sent to occupier of premises – Revaluation exercise null and void – Kelantan Municipal Enactment, 1938, ss. 19 to 33.*

*Landlord and tenant – Rent control – Application of rent control legislation in Kelantan – Whether excess rent charged – Control of Rent Ordinance, 1956 – Control of Rent Application Enactment, Kelantan, 1964 – Control of Rent Act, 1966.*

In this case the appellant was a tenant of the second respondent of a cinema hall in Kota Bharu, Kelantan, called Rex Theatre. The premises were let under two leases. The first lease commenced on September 1, 1962 and expired on August 31, 1973 at a rental of $2,000.00 per month. The second lease was backdated to begin on September 1, 1973 for a further period of five years at a rental charge of $6,000.00 per month. After the second lease was signed the appellants became aware that the premises were subject to rent legislation and they therefore demanded refund of the excess. The second respondent applied to the first respondent for an increase of the valuation of the annual value of the premises. The first respondent took steps to increase the valuation but no notice was sent to the occupier of the premises, the appellants. The appellants brought an action to recover the excess of rents and another action for a declaration that the revaluation exercise was null and void. The actions were tried together and the learned judge dismissed the actions. The appellant appealed.

**Held:** (1) the first respondents were under an obligation to issue the requisite notice to the occupier of the premises and as they did not do so the revaluation must so far as the tenant is concerned be regarded as null and void;

(2) the $2,000.00 rent is permitted under the proviso to section 27 of the Control of Rent Act, 1966 and is therefore lawful, it being permitted by the repealed Kelantan Enactment No. 17/1964;

(3) it is not for the court to determine the fair rent as regards the $5,000.00 rent under the second lease agreement;

(4) there is therefore no question of excess of rent having arisen and as such, no recovery thereof could be claimed.

*Case referred to:*

(1) *Haji P.M. Abu Bakar* v. *Madam Gan Jin Sim* (Kota Bharu High Court Civil Suit No. 43 of 1966) *(unreported).*